

IN THE SENATE OF THE UNITED STATES.

APRIL 12, 1860.—Ordered to be printed.

Mr. HEMPHILL submitted the following

REPORT.

[To accompany Bill H. R. 233.]

The Committee on Claims, to whom were referred the memorial of the legal representatives of C. G. Treichel and others, deceased, late clerks in the Philadelphia custom-house, praying arrears of compensation due said clerks; and also House bill No. 233, "for the relief of the legal representatives of five deceased clerks in the Philadelphia custom-house," have examined the same, and report:

This claim is presented by the legal representatives of five persons who were clerks in the Philadelphia custom-house, between the years 1821 and 1832. The period of service of each one respectively is given in a statement made by the deputy collector at Philadelphia in 1853, taken from the records of the custom-house. It is a claim for arrears of compensation due said clerks, and appears to have arisen in this manner:

By the act of 2d March, 1799, "to establish the compensation of the officers employed in the collection of the duties, &c.," the collectors at the larger ports were paid in the shape of fees, which were fixed and regulated by the act. They were required to pay no portion of these fees into the treasury, but were allowed to retain all the balance remaining after paying certain expenses incident to the office. The employment and pay of clerks was left entirely to the discretion of the collectors, the only condition being, that they should "keep accurate accounts of all fees and official emoluments received by them; also, of all expenditures particularizing their expenditures for rent, fuel, stationery, and clerk hire," which, verified by oath or affirmation, were to be sent to the Comptroller of the Treasury, who was required to lay an abstract of them before Congress annually. On the 30th April, 1802, an act was passed, to take effect on the 30th June, 1802, amending the act of 1799, the third section of which, is as follows: "That from and after the said 30th day of June, whenever the annual emoluments of any collector of the customs, after deducting therefrom the expenditures incident to his office, shall amount to more than five thousand dollars, or those of a naval officer, after like deduction, to more than three thousand five hundred dollars, or those of a surveyor, after a like deduction to more than three thousand dollars, the surplus shall be accounted for; and

be paid by them, respectively, to the treasury of the United States: *Provided always*, That nothing in this act contained shall be construed to extend to fines, forfeitures, and penalties, under the revenue laws of the United States." In May, 1822, another act was passed regulating the compensation of the officers of the customs. Section 9 requires that whenever the emoluments of any collector of the customs of either of certain ports, among which is Philadelphia, shall exceed four thousand dollars, "after deducting the necessary expenses incident to his office in the same year, the excess shall, in every such case, be paid into the treasury for the use of the United States." Section 13 provides that every collector shall, together with his accounts of the expenses incident to his office, render a list of the clerks employed by him, stating the rate of compensation allowed to each, and the duties they severally perform. Section 15 provides that the Secretary of the Treasury may, from time to time, limit and fix the number and compensations of the clerks to be employed by any collector. This was the first time the appointment and pay of clerks was taken out of the hands of the collectors, but, as will be seen by a letter from the Comptroller of the Treasury, which will be incorporated in this report, the power thus given to the Secretary of the Treasury had never been exercised up to the year 1846; so that, practically, the employment and compensation of the clerks in the custom-houses still continued under the direction of the collectors.

It appears from the papers that, to secure for himself the full amount of the maximum allowed by law, the collector at Philadelphia employed clerks at small salaries with the understanding that, if at the end of the year, after retaining for himself the maximum allowed by law, there still remained an excess of emoluments, that their salaries should be increased out of said emoluments. This practice prevailed prior to 1822, and has been continued most of the time since, sanctioned by the Secretary of the Treasury. From its discontinuance during the years from 1821 to 1832, under peculiar circumstances, the claim now under consideration has arisen. In 1822, from ill-health of the collector, the business of the Philadelphia custom-house passed into the hands of the deputy collector. It is stated by the petitioners that the said deputy exercised despotic power over the clerks, and instead of paying them out of the surplus of emoluments, at the end of the year, anything additional to their minimum salaries, sent all of the surplus of emoluments to the treasury of the United States. This practice the deputy collector continued up to the year 1832, and during the interval the sum of \$48,768 58 of surplus emoluments was paid into the treasury, as appears from a certified statement of the Register of the Treasury. That the clerks did not receive during that period the usual amount they had received previous to 1822, will appear from the following table certified by the register :

Clerks' pay from 1816 to 1831.

Year.	Clerk hire paid.	Balance after paying expenses.	Collector's compensation.	Surplus.
1816.....	\$14,368 03	\$19,165 94	\$5,000 00	\$14,165 94
1817.....	15,052 26	12,496 66	5,000 00	7,496 66
1818.....	15,148 20	7,073 44	5,000 00	2,073 44
1819.....	15,779 14	5,416 33	5,000 00	416 33
1820.....	11,692 00	4,993 41	4,993 41	.....
1821.....	11,017 25	4,281 01	4,281 01	.....
1822.....	10,573 67	5,027 12	3,970 04	1,057 08
1823.....	10,725 00	11,669 76	4,400 00	7,269 76
1824.....	11,330 51	10,353 45	4,400 00	5,953 45
1825.....	10,849 00	12,491 07	4,400 00	8,091 07
1826.....	11,085 00	14,502 18	4,400 00	10,102 18
1827.....	10,620 00	6,496 22	4,374 45	2,121 77
1828.....	10,620 00	12,031 59	4,400 00	7,631 59
1829.....	10,620 55	3,985 13	3,459 20	525 93
1830.....	11,236 30	7,462 47	4,400 00	3,062 47
1831.....	11,370 26	7,353 28	4,400 00	2,953 28

It will be observed, that from 1816 to 1819 the collector received his maximum compensation, and the clerks' hire reached from \$14,368 03 to \$15,779 14, and still a surplus remained; that during the years 1820 and 1821 the collector did not get his maximum, and the clerks' hire fell to \$11,692 00 and \$11,017 25, and no surplus remained; the emoluments being small during those years. By the act of May 7, 1822, the collector's maximum compensation was fixed at \$4,400, and it will be observed that from 1822 to 1831 inclusive, that although the collectors received their maximum pay, except in a few instances, from a change of collectors, and a surplus in the aggregate of \$48,768 58 remained, still the clerks' hire reached only from \$10,573 67 to \$11,370 26, about the same as it was during the years 1820 and 1821, when there was no surplus of emoluments.

The five clerks, your petitioners, claim now the sum of \$9,895 17 to complete their maximum pay during those years from 1822 to 1831 inclusive, when there was a sufficient surplus of emoluments to allow it, but which surplus was sent to the Treasury of the United States, and a portion of it still remains there. The deputy collector who deprived them of their maximum pay, afterwards became collector, and outlived all of the five clerks. There were, however, eight other clerks in the Philadelphia custom-house during the same period as the five deceased clerks who survived after the death of the collector, and who, upon application to his successor, were paid the amount necessary to complete their maximum of compensation during the years from 1822 to 1831 inclusive. This act of his successor was approved by the Secretary of the Treasury, as will appear from the following letter:

TREASURY DEPARTMENT,
Comptroller's Office, March 7, 1846.

SIR: I have duly considered the inclosed abstract of payments made by Calvin Blythe, collector of the customs at Philadelphia, to clerks

in the custom-house of that port, amounting to the aggregate sum of \$41,058 90, for services rendered by them from 1822 to the year 1832, at *maximum rates, stipulated to be paid when the emolument accounts of said collector showed a surplus wherewith to pay the same, and so actually allowed and paid in years prior to 1822*, and which *maximum rates* do not appear to have been modified by the act of Congress approved May 7, 1822, nor by any decision of the Secretary of the Treasury, who alone could subsequently have increased or reduced them; but, on the contrary, seems to have been afterwards recognized and sanctioned by that officer when, in the year 1839, the sum of \$15,000, under the act approved March 3, 1839, and in the year 1841, the sum of \$10,110, under the act approved March 3, 1841, were distributed amongst and paid to clerks in said custom-house to complete said *maximum rates* of compensation for services performed from the year 1832 to the year 1837; and which rates have since been continuously, and are now allowed in conformity with law; and notwithstanding I think said collector should not have assumed to pay compensation earned so long before the beginning of his term of office, and when the propriety of paying it was under the consideration of this department, still, as I believe said compensation was earned under, and claimed in conformity with a well-known and valid agreement; and that if said payment shall not be credited in the adjustment about to be made here of said collector's final account, in which he has charged this sum, and suit shall be brought against him and his sureties to recover the same, that agreement would be proved to the satisfaction of the court and jury, and the sum paid thereunder be consequently allowed by the verdict; therefore, I do hereby respectfully submit and advise, that it is expedient to allow and credit said collector in the said adjustment with the sum of said payments.

With great respect, your obedient servant,

JAS. W. McCULLOH.

HON. ROBERT J. WALKER,
Secretary of the Treasury.

[Indorsement.]

The within report approved.

R. J. WALKER,
Secretary of the Treasury.

MARCH 7, 1846.

After this decision of the Secretary of the Treasury, and during the same year, (1846,) the attorney of the representatives of the five deceased clerks presented their claims at the treasury, but connected with them the claims of seven other clerks, which did not stand on the same footing. This, together with the fact that the aggregate of both sets of claims exceeded the balance of the surplus of emoluments in the treasury, caused embarrassment in adjusting the account, and the case was suspended. In the meantime, the attorney died, and the claim was not pressed until 1854, when the memorialists again presented their claims to the commissioner of customs, with a communi-

cation from the seven clerks relinquishing all claim, on their part, against the United States, for arrears of compensation for services rendered. After laying some time in his office, the papers were returned to the petitioners with the remark that they could apply directly to the Secretary. On the 7th October, 1854, therefore, the papers were addressed to the Secretary of the Treasury, who was then absent from the city; and shortly after, the Assistant Secretary sent the packages to the commissioner of customs, with the following indorsement:

"I think these claims stand upon a different footing from those provided for by law, and that the fact of a provision for others is an exclusion of these. A parol agreement, as alleged in those cases, is entitled to no consideration in the face of receipts given at the time, and after the lapse of thirty years.

"P. G. W.

"October 23, 1854."

The receipts alluded to in the above indorsement have been asked for, but your committee has been informed at the treasury that they were destroyed when the old treasury building was burned.

The claim was afterwards presented to the present Secretary of the Treasury, and in a reply, dated the 16th December, 1857, he says, "I have to state that as this claim was presented during the official term of my predecessor, and I find the following decision indorsed on the papers," (which has already been quoted,) "and no new facts being presented, I do not feel authorized, under the rule laid down in such cases, to reopen the claims." He appears, therefore, never to have examined this claim upon its merits.

The following statement indicates the time of service and the pay claimed by the petitioners:

Statement of arrears of compensation due to the following clerks who were in the custom-house at the district and port of Philadelphia, in the year 1822, and between that and the year 1832. The said compensation having been due and payable to them out of the surplus emoluments of the collector, but withheld by the then deputy collector, under his misapprehension of the act of May 7, 1822, and erroneously paid into the treasury.

	From—	To—	Rate paid.	Rate claimed.	Difference.	Amount due.
Estate of G. C. Treichel..	Jan. 1, 1822	Feb. 28, 1826	\$1,200	\$1,500	\$300	} \$1,850 00
	Mar. 1, 1826	Oct. 31, 1826	600	.....	900	
Estate of Eli Valette.....	Jan. 1, 1822	Feb. 1, 1824	1,200	1,500	300	623 90
Estate of J. B. Shull.....	.....	Dec. 11, 1824	660	1,200	540	1,591 27
Estate of David Gibson...	.....	Jan. 31, 1825	660	1,200	540	} 4,985 00
	Feb. 1, 1825	Dec. 31, 1831	720	.....	480	
Estate of Wm. Bryant...	Jan. 1, 1822	Mar. 31, 1825	540	800	260	845 00
						9,895 17

CUSTOM-HOUSE, PHILADELPHIA,
Collector's Office, April 6, 1853.

I do hereby certify that, on examination of the records of this office, it appears that the following named clerks in the collector's office received the arrears of compensation due them on report of the First Comptroller, March 7, 1846, and approved by the Secretary of the Treasury, to wit: Thomas F. Valette, Richard L. Howell, John C. Pechin, Robert Steele, Abraham Martin, Charles Treichel, Thomas Latimer, and Thomas Ashmead; and that the five clerks named in the foregoing list, now deceased, have not as yet received the arrears of compensation therein stated, and now claimed by their legal representatives, out of the surplus fees of the collector, erroneously paid into the treasury.

CHARLES TREICHEL,
Deputy Collector.

Your committee see no ground of distinction between this claim and that of the eight clerks which has been paid, and acknowledged to be just. They therefore report back House bill 233 without amendment, and recommend its passage.



